

REMARKS

Applicants thank the Examiner for the consideration given the present application. Claims 26-49 are currently pending, of which claims 27 and 38 are amended. The Examiner is respectfully requested to reconsider her rejections in view of the Amendments and Remarks as set forth hereinbelow.

Examiner Interview

If, during further examination of the present application, any further discussion with the Applicants' Representative would advance the prosecution of the present application, the Examiner is encouraged to contact Carl T. Thomsen, at 1-703-208-4030 (direct line) at his convenience.

Rejections Under 35 U.S.C. §§ 102 & 103

Claims 26-32, 35-43, 46 and 47 stand rejected under 35 U.S.C. § 102(e) as anticipated by Ferre et al. Claims 33, 34, 44, 45, 48, and 49 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ferre et al. in view of Anthony. These rejections are respectfully traversed.

Each of **independent claims 26 and 37** as previously presented recites a combination of elements directed to a stereostatic device, including *inter alia*

“at least three fiducial markers mounted on the frame and configured to define a position of the frame with respect to the subject, the at least three fiducial markers being in

different vertical lines from one another, the vertical lines being substantially perpendicular to the frame,

wherein the frame is configured to contact the subject only on a nose of the subject and is configured to be located only in front of a plane defined by eyes of the subject when the frame is mounted onto the subject.”

Comments Regarding Ferre et al. as discussed in the Office Action of November 13, 2009

First of all, the Applicant reminds the Examiner that the Ferre et al. reference discloses multiple alternative and distinct embodiments in FIGS. 1-32.

The Office Action dated November 13, 2009 states that Ferre et al. FIG. 1 discloses that the frame is capable of contacting only the nose of the subject and located in front of a plane defined by the eyes of the subject when the frame is mounted onto the subject (see page 2 of the Office Action).

Once again, the Applicants respectfully disagree with the Examiner's rejection.

As can be seen in Ferre et al. column 4, lines 11-26 and FIGS. 1-4, 18, 19, 28, this document merely discloses a head set 12 provided with two ear mounts 28 on left and right side members 30 (which extend across the patient's forehead, above and to the rear of the eyes, and down to the ears), and a nose bridge 32 on a center member 34 extending downwardly from a point above the eyes at a center of the forehead and passing between the patient's eyes. Thus, the head set 12 of Ferre et al. contacts the forehead, both sides of the head, the two ears, and portions of the face above and between the two eyes.

As argued previously, it is unreasonable and not proper for the Examiner to select a single portion (namely, center member 34) of the head set 12, as disclosing the frame 3 of the present invention.

The center member 34 (even if considered alone, which is not proper) fails to teach or suggest the frame 3 of the present invention. As pointed out above, center member 34 extends downwardly from a point above the eyes at a center of the forehead and passes between the patient's eyes.

Secondly, in the Office Action of November 13, 2009, the Examiner refers to markers 116 on center plate 102 of center member 34 of the alternative and distinct embodiment shown in FIG. 18-19.

As the Examiner knows well, it is not proper to combine features from two distinct alternative embodiments, such as the embodiment in FIGS 1-4 and the embodiment in FIGS 18-19.

Further, neither the embodiment shown in FIGS 1-4, nor the alternative embodiment shown in FIGS 18-19, can teach or suggest:

“at least three fiducial markers mounted on the frame and configured to define a position of the frame with respect to the subject, the at least three fiducial markers being in different vertical lines from one another, the vertical lines being substantially perpendicular to the frame,

wherein the frame is configured to contact the subject only on a nose of the subject and is configured to be located only in front of a plane defined by eyes of the subject when the frame is mounted onto the subject,” as set forth in each of **independent claims 26 and 37**.

Comments Regarding Ferre et al. as discussed in the Advisory Action of April 19, 2010

Again, the Applicant reminds the Examiner that Ferre et al. discloses multiple alternative and distinct embodiments in FIGS. 1-32.

In the Advisory Action dated April 19, 2010, the Examiner refers to the embodiment in FIGS. 2-4 and column 4, lines 23-25 which discloses

“the center member 34 may be rotatable with respect to the side members 30
... Thus, the center member 34 may be interpreted as the claimed “frame.”

The Applicant respectfully submits that the fact the center member 34 of Ferre et al. in the embodiment of FIGS. 2-4 is rotatable is not relevant.

As argued above, only the embodiment shown in FIGS. 18 and 19 shows markers 116 on center plate 102 of center member 34, and there is no indication that the center plate 34 of FIGS. 18-19 is rotatable.

As argued above, neither the embodiment shown in FIGS 1-4, nor the alternative embodiment shown in FIGS 18-19, can teach or suggest:

“at least three fiducial markers mounted on the frame and configured to define a position of the frame with respect to the subject, the at least three fiducial markers being in

different vertical lines from one another, the vertical lines being substantially perpendicular to the frame,

wherein the frame is configured to contact the subject only on a nose of the subject and is configured to be located only in front of a plane defined by eyes of the subject when the frame is mounted onto the subject,” as set forth in each of **independent claims 26 and 37**.

However, even if, for the sake of argument, center member 34 as shown in the embodiment of FIGS 18-19 were rotatable (as with the center member 34 of the embodiment of FIGS 1-4), it is evident that the center member 34 of both embodiments makes contact with the forehead of the subject at a position above the eyes.

If the Examiner continues to believe that the Ferre et al. reference discloses the subject matter set forth in each of **independent claims 26 and 37**, she is respectfully requested to provide specific evidence to support her position.

Otherwise, the rejection based on the disclosure of Ferre et al. should be withdrawn.

Inherency Test Not Met

As the Examiner knows well, a prior art reference anticipates the subject matter of a claim when that reference discloses every feature of the claimed invention, either explicitly or inherently. *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997) and *Hazani v. Int'l Trade Comm'n*, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed Cir. 1997). While, of course, it is possible that it is inherent in the operation of the prior art

device that a particular element operates as theorized by the Examiner, inherency may not be established by probabilities or possibilities. What is *inherent*, must necessarily be disclosed. *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) and *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

The Ferre et al. reference fails to disclose the subject matter of **independent claims 26 and 37**.

Regarding Anthony

As argued previously, the Anthony was cited in the rejection of dependent claims 33, 34, 44, 45, 48, and 49 merely to disclose a supporting element 30 forming a closed loop

As such, Anthony fails to overcome the deficiencies of Ferre et al. in order to arrive at the subject matter of **independent claims 26 and 37**

Accordingly, it is respectfully submitted that **independent claims 26 and 37** and each of the claims depending therefrom are allowable.

Dependent Claims

The Examiner will note that dependent claims 27 and 38 have been amended to further clarify the claimed invention.

All dependent claims are in condition for allowance due to their dependency from allowable independent claims, or due to the additional novel features set forth therein.

All pending claims are now in condition for allowance. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. §102(e) and 103(a) are respectfully requested.

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CONCLUSION

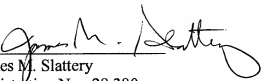
In view of the above remarks, it is believed that the claims clearly distinguish over the patents relied on by the Examiner, either alone or in combination.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Carl T. Thomsen, Reg. No. 50786 at (703) 208-4030 (direct line) in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-1448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly extension of time fees.

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Respectfully submitted,

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